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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 JENNIFER C. DOMINGO,

12 Plaintiff,

13 v.

14 ANDREW SAUL, Commissioner of Social
15 Security,

16 Defendant.
17

No. 2:20-cv-00733 CKD

ORDER

18 Plaintiff seeks judicial review of a final decision of the Commissioner of Social Security
19 (“Commissioner”) denying an application for Supplemental Security Income (“SSI”) under Title
20 XVI of the Social Security Act (“Act”). The parties have consented to Magistrate Judge
21 jurisdiction to conduct all proceedings in the case, including the entry of final judgment. For the
22 reasons discussed below, the court will deny plaintiff’s motion for summary judgment and grant
23 the Commissioner’s cross-motion for summary judgment.

24 BACKGROUND

25 Plaintiff, born in 1984, applied on April 24, 2017 for SSI, alleging disability beginning
26 December 27, 2014; later, the alleged onset date was amended to April 24, 2017. Administrative
27 Transcript (“AT”) 23, 104, 289. In 2006, she was in a serious car accident that fractured her neck
28 and required spinal surgery. AT 30. In her application, plaintiff alleged she was unable to work

1 due to neck injury, back injury, chronic migraines, and arthritis. AT 104.

2 In a decision dated March 12, 2019, the ALJ determined that plaintiff was not disabled.¹
3 AT 23-36. The ALJ made the following findings (citations to 20 C.F.R. omitted):

4 1. The claimant has not engaged in substantial gainful activity since
5 April 24, 2017, the application date.

6 2. The claimant has the following severe impairments: fractured
7 spine and degenerative disc disease, status post two cervical spine
8 fusions, C4-C6, and C6-C7, with bone graft at C7.

9 3. The claimant does not have an impairment or combination of
10 impairments that meets or medically equals one of the listed
11 impairments in 20 CFR Part 404, Subpart P, Appendix 1.

12 4. After careful consideration of the entire record, the undersigned

13 ¹ Disability Insurance Benefits are paid to disabled persons who have contributed to the
14 Social Security program, 42 U.S.C. § 401 et seq. Supplemental Security Income is paid to
15 disabled persons with low income. 42 U.S.C. § 1382 et seq. Both provisions define disability, in
16 part, as an “inability to engage in any substantial gainful activity” due to “a medically
17 determinable physical or mental impairment. . . .” 42 U.S.C. §§ 423(d)(1)(a) & 1382c(a)(3)(A).
18 A parallel five-step sequential evaluation governs eligibility for benefits under both programs.
19 See 20 C.F.R. §§ 404.1520, 404.1571-76, 416.920 & 416.971-76; Bowen v. Yuckert, 482 U.S.
20 137, 140-142, 107 S. Ct. 2287 (1987). The following summarizes the sequential evaluation:

21 Step one: Is the claimant engaging in substantial gainful
22 activity? If so, the claimant is found not disabled. If not, proceed to
23 step two.

24 Step two: Does the claimant have a “severe” impairment? If
25 so, proceed to step three. If not, then a finding of not disabled is
26 appropriate.

27 Step three: Does the claimant’s impairment or combination
28 of impairments meet or equal an impairment listed in 20 C.F.R., Pt.
404, Subpt. P, App.1? If so, the claimant is automatically determined
disabled. If not, proceed to step four.

Step four: Is the claimant capable of performing his past
work? If so, the claimant is not disabled. If not, proceed to step five.

Step five: Does the claimant have the residual functional
capacity to perform any other work? If so, the claimant is not
disabled. If not, the claimant is disabled.

26 Lester v. Chater, 81 F.3d 821, 828 n.5 (9th Cir. 1995).

27 The claimant bears the burden of proof in the first four steps of the sequential evaluation
28 process. Bowen, 482 U.S. at 146 n.5, 107 S. Ct. at 2294 n.5. The Commissioner bears the
burden if the sequential evaluation process proceeds to step five. Id.

1 finds that the claimant has the residual functional capacity to perform
2 the full range of light work.

3 5. The claimant is capable of performing past relevant work as a
4 cashier. This work does not require the performance of work-related
5 activities precluded by the claimant's residual functional capacity.

6 6. The claimant has not been under a disability, as defined in the
7 Social Security Act, since April 24, 2017, the date the application
8 was filed.

9 AT 25-35.

10 In alternative findings at step five, the ALJ found that there were other jobs existing in the
11 national economy that plaintiff could perform. Specifically, the ALJ determined:

12 The claimant was born on XX/XX/1984 and was 32 years old, which
13 is defined as a younger individual age 18-49, on the date the
14 application was filed. The claimant has at least a high school
15 education and is able to communicate in English. Transferability of
16 job skills is not material to the determination of disability because
17 applying the Medical-Vocational Rules directly supports a finding of
18 'not disabled,' whether or not the claimant has transferable job skills.

19 In the alternative, considering the claimant's age, education, work
20 experience, and residual functional capacity, there are other jobs that
21 exist in significant numbers in the national economy that the claimant
22 also can perform.

23 AT 35.

24 ISSUES PRESENTED

25 Plaintiff argues that the ALJ committed the following errors in finding plaintiff not
26 disabled: (1) the ALJ improperly evaluated the opinion evidence as to mental limitations and
27 failed to incorporate mental limits into the RFC; and (2) the ALJ failed to properly consider
28 plaintiff's left arm disorder when formulating the RFC.

29 LEGAL STANDARDS

30 The court reviews the Commissioner's decision to determine whether (1) it is based on
31 proper legal standards pursuant to 42 U.S.C. § 405(g), and (2) substantial evidence in the record
32 as a whole supports it. Tackett v. Apfel, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial
33 evidence is more than a mere scintilla, but less than a preponderance. Connett v. Barnhart, 340
34 F.3d 871, 873 (9th Cir. 2003) (citation omitted). It means "such relevant evidence as a reasonable

1 mind might accept as adequate to support a conclusion.” Orn v. Astrue, 495 F.3d 625, 630 (9th
2 Cir. 2007), quoting Burch v. Barnhart, 400 F.3d 676, 679 (9th Cir. 2005). “The ALJ is
3 responsible for determining credibility, resolving conflicts in medical testimony, and resolving
4 ambiguities.” Edlund v. Massanari, 253 F.3d 1152, 1156 (9th Cir. 2001) (citations omitted).
5 “The court will uphold the ALJ’s conclusion when the evidence is susceptible to more than one
6 rational interpretation.” Tommasetti v. Astrue, 533 F.3d 1035, 1038 (9th Cir. 2008).

7 The record as a whole must be considered, Howard v. Heckler, 782 F.2d 1484, 1487 (9th
8 Cir. 1986), and both the evidence that supports and the evidence that detracts from the ALJ’s
9 conclusion weighed. See Jones v. Heckler, 760 F.2d 993, 995 (9th Cir. 1985). The court may not
10 affirm the ALJ’s decision simply by isolating a specific quantum of supporting evidence. Id.; see
11 also Hammock v. Bowen, 879 F.2d 498, 501 (9th Cir. 1989). If substantial evidence supports the
12 administrative findings, or if there is conflicting evidence supporting a finding of either disability
13 or nondisability, the finding of the ALJ is conclusive, see Sprague v. Bowen, 812 F.2d 1226,
14 1229-30 (9th Cir. 1987), and may be set aside only if an improper legal standard was applied in
15 weighing the evidence. See Burkhart v. Bowen, 856 F.2d 1335, 1338 (9th Cir. 1988).

16 ANALYSIS

17 A. Mental Limitations

18 Plaintiff asserts that the RFC should have included mental limitations, citing the opinions
19 of examining psychiatrist Dr. Les Kalman and State agency medical consultant Dr. H. Amado.
20 Plaintiff claims that the ALJ erred in evaluating these opinions and in concluding that plaintiff’s
21 mental impairments were non-severe.

22 1. Legal Standard for Applications Filed On or After March 27, 2017

23 “The ALJ is responsible for translating and incorporating clinical findings into a succinct
24 RFC.” Rounds v. Comm’r Soc. Sec. Admin., 807 F.3d 996, 1006 (9th Cir. 2015). In doing so,
25 the ALJ must articulate a “substantive basis” for rejecting a medical opinion or crediting one
26 medical opinion over another. Garrison v. Colvin, 759 F.3d 995, 1012 (9th Cir. 2014); see also
27 Marsh v. Colvin, 792 F.3d 1170, 1172-73 (9th Cir. 2015) (“an ALJ cannot in its decision totally
28 ignore a treating doctor and his or her notes, without even mentioning them”).

1 The Ninth Circuit previously has required that, in order to reject an uncontradicted
2 opinion of a treating or examining physician, the ALJ must provide “clear and convincing reasons
3 that are supported by substantial evidence.” Trevizo v. Berryhill, 871 F.3d 664, 675 (9th Cir.
4 2017); Ghanim v. Colvin, 763 F.3d 1154, 1160-61 (9th Cir. 2014). Alternatively, “[i]f a treating
5 or examining doctor's opinion is contradicted by another doctor’s opinion, an ALJ may only
6 reject it by providing specific and legitimate reasons that are supported by substantial evidence.”
7 Trevizo, 871 F.3d at 675.

8 However, for disability applications filed on or after March 27, 2017, the Commissioner
9 revised the rules for the evaluation of medical evidence at the administrative level. See Revisions
10 to Rules Regarding the Evaluation of Medical Evidence, 82 Fed. Reg 5844-01 (Jan. 18, 2017).
11 Because Plaintiff filed her SSI application on April 24, 2017, it is subject to the new rules for the
12 evaluation of medical evidence.

13 The revised rules provide that adjudicators for the Social Security Administration,
14 including ALJs, evaluate medical opinions according to the following factors: supportability;
15 consistency; relationship with the claimant; specialization; and other factors such as the medical
16 source's familiarity with other evidence in the record or with disability program requirements. 20
17 C.F.R. § 416.920c(c)(1)-(5). The most important of these factors are supportability and
18 consistency. 20 C.F.R. § 416.920c(b)(2). Supportability is the extent to which an opinion or
19 finding is supported by relevant objective medical evidence and the medical source’s supporting
20 explanations. 20 C.F.R. § 416.920c(c)(1). Consistency is the extent to which an opinion or
21 finding is consistent with evidence from other medical sources and non-medical sources,
22 including the claimants themselves. 20 C.F.R. §§ 416.920c(c)(2), 416.902(j)(1). The ALJ will
23 articulate how she considered the most important factors of supportability and consistency, but an
24 explanation for the remaining factors is not required except when deciding among differing yet
25 equally persuasive opinions or findings on the same issue. 20 C.F.R. § 416.920c(b). When a
26 single medical source provides multiple opinions and findings, the ALJ must articulate how they
27 were considered in a single analysis. 20 C.F.R. § 416.920c(b)(1).

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1 2. Analysis

2 Plaintiff alleged she became disabled in April 2017. That month, she was treated for
3 anxiety and began seeing a counselor for talk therapy. AT 294-297. In a June 2017 psychiatric
4 consultation, she stated that her anxiety and PTSD symptoms had increased in recent months. AT
5 534. In November 2017, Dr. Kalman examined plaintiff and diagnosed her with major depressive
6 disorder, panic disorder, anxiety and depression due to another medical condition, post-traumatic
7 stress disorder, and anorexia by history. AT 340-343. Plaintiff continued to receive
8 psychological counseling in 2018, describing anxiety since her 2006 car accident, feelings of
9 depression, daily panic attacks, insomnia, isolation, nightmares, and flashbacks. AT 401-408,
10 527-532.

11 The ALJ found that plaintiff's "medically determinable impairments of [PTSD], bipolar
12 disorder, and anorexia, considered singly and in combination, do not cause more than minimal
13 limitation in the claimant's ability to perform basic mental work activities and are therefore non-
14 severe." AT 26.

15 Dr. Kalman

16 In reaching this conclusion, the ALJ partially credited Dr. Kalman's November 2017
17 opinion while rejecting other parts of the opinion. The ALJ found that "Dr. Kalman's objective
18 findings appear valid. Examples are that the claimant's thought was logical and goal-directed,
19 with no loose associations, no mood swings, and no emotional lability."² AT 31, citing AT 341-
20 342. However, the ALJ continued,

21 Dr. Kalman's opinion that the claimant has decreased ability to
22 maintain regular attendance in the workplace and perform work
23 activities on a consistent basis, and his conclusion that she had
 decreased ability to complete a normal work day or work week

24 ² Similarly, the ALJ cited Dr. Kalman's objective findings in support of the determination that
25 plaintiff was not limited in her ability to understand, remember, or apply information. The ALJ
26 noted that, per Dr. Kalman in 2017, plaintiff "was alert and oriented to person, place, date, and
27 situation; she recalled three of three objects after five minutes; she was able to repeat five digits
28 forwards and five backwards; she could do serial 3's with no errors; she could add, subtract, and
multiply; she recalled two of the past five Presidents, and her abstractions were intact. Dr.
Kalman considered her intelligence average." AT 26; see AT 341-342.

1 without interruption, are without support from any medical evidence
2 of record, and are inconsistent with his own findings that the claimant
3 performed satisfactorily on the several memory tests he gave her, that
she could do arithmetic, that her insight and judgment were fair, and
that her thoughts were logical and goal-directed.

4 AT 31, citing AT 341-342.

5 The ALJ found Dr. Kalman's findings of normal mental functioning consistent with the
6 observations of another physician, Dr. Vijay Patel, who met with claimant three times in 2018
7 and noted each time that she was well-groomed, her thought process was linear, and her cognition
8 was grossly intact.³ AT 31, citing AT 528, 530, 532. The ALJ noted that plaintiff's statements to
9 Dr. Kalman established she "can manage herself well most of the time," as she attested "that she
10 did her own shopping, cooking, and housekeeping as she was able, that she managed her own
11 transportation, cared for her own hygiene, and paid her own bills." AT 27, citing AT 342. The
12 ALJ also observed at the hearing that plaintiff "understood and answered questions well." AT 27.

13 Rejecting Dr. Kalman's opined mental limitations, the ALJ found plaintiff to have only
14 mild limitations in concentrating, persisting, or maintaining pace. AT 26-27. The ALJ found
15 plaintiff's normal performance on memory tests, fair insight and judgment, and logical, goal-
16 oriented thoughts to be "inconsistent" with Dr. Kalman's findings that she had a decreased ability
17 to complete a normal work day or maintain regular attendance in the workplace. AT 27. The
18 ALJ noted that plaintiff had never been medicated for attention deficit problems, and was able to
19 understand and answer questions at the hearing on her claim. AT 27. "There is no evidence to
20 support [Dr. Kalman's] opinion that she would have a decreased ability to maintain attendance,"
21 the ALJ concluded. AT 27.

22 In fact, there is some evidence that plaintiff could not complete a normal workday or
23 maintain regular attendance: plaintiff's subjective testimony as to the debilitating effects of her
24 mental symptoms. See AT 29 (noting plaintiff's 2017 statements to Dr. Kalman that she left her
25 job in December 2016 due to pain and emotional distress; also noting plaintiff's hearing
26 testimony of debilitating panic attacks). However, in an unchallenged finding, the ALJ found

27 ³ Dr. Patel also noted plaintiff's self-reported mental symptoms of anxiety, panic attacks,
28 insomnia, depression, agoraphobia, and nightmares/flashbacks. See AT 530, 532.

1 plaintiff's statements concerning the intensity, persistence, and limiting effects of her symptoms
2 only partly credible "because the medical findings do not support the level of impairment that the
3 claimant alleges she experiences." AT 30. The ALJ agreed with State medical consultant Betty
4 Santiago, M.D., who assessed plaintiff at the Reconsideration level and "felt that Dr. Kalman's
5 opinion relied too heavily on the claimant's reports of symptoms and limitations, . . . and . . .
6 overestimated the severity of the claimant's restrictions at limitations." AT 32, citing AT 127-
7 134 (Dr. Santiago's finding that records do not support finding of severe mental impairment,
8 despite self-reported symptoms), AT 130 (Dr. Santiago's finding that Dr. Kalman's 2017 report
9 was not consistent with the overall evidence).

10 The ALJ also credited the opinion of State psychological consultant Helen C. Patterson,
11 Ph.D., who reviewed plaintiff's records at the Reconsideration level. "Dr. Patterson," the ALJ
12 wrote, concluded that:

13 the available records did not support the claimant having a severe
14 mental impairment. Dr. Patterson explained that although the
15 claimant self-reports symptoms, there were no objective
16 observations of same, and the medical evidence of record sources
17 only note diagnoses, and indicate the claimant is stable. Dr.
18 Patterson also strongly weighed the claimant's lack of treatment for
19 any mental conditions. Thus, the doctor found the conditions
described by listings 12.04 (depressive, bipolar, and related
disorders) and 12.06 (anxiety and obsessive-compulsive disorders)
were non-severe.⁴ The undersigned agrees with this opinion, and
finds it both supported by, and consistent with, the evidence of
record.⁵ Therefore, the undersigned found this opinion persuasive.

20 AT 32.

21 In sum, the ALJ articulated why he found Dr. Santiago's and Dr. Patterson's opinions to
22 be supported by objective medical evidence, such as unremarkable mental findings on
23 examination. The ALJ also articulated why he found these opinions consistent with other factors
24 in the record, including Dr. Patel's observations in 2018; plaintiff's statements to Dr. Kalman that
25 she could perform many activities of daily living such as shopping, cooking, and housekeeping;

26 ⁴ Citing AT 129.

27 ⁵ Citing AT 341-342 (Dr. Kalman's objective findings of normal mental functioning) and hearing
28 transcript.

1 and plaintiff's demeanor at the hearing. The ALJ endorsed Dr. Patterson's reasons for finding
2 plaintiff's mental impairments non-severe, including plaintiff's lack of treatment for mental
3 conditions and her general stability, according to treatment notes. Insofar as the ALJ rejected
4 portions of Dr. Kalman's 2017 opinion, plaintiff has not shown reversible error on this basis.

5 Dr. Amado

6 The ALJ also rejected the opinion of State psychological consultant H. Amado, M.D.,
7 who reviewed plaintiff's records at the Initial level. AT 33. Discussing this opinion, the ALJ
8 wrote in part:

9 Dr. Amado . . . opined that the claimant was moderately limited in
10 her ability to complete a normal workday and workweek without
11 interruptions from psychologically based symptoms, and that she
12 was moderately limited in her ability to respond appropriately to
13 changes in the work setting. The undersigned found no evidence to
14 support these limitations. On the contrary, Dr. Kalman's
15 consultative psychiatric examination found the claimant performed
16 satisfactorily on several memory tests he gave her, that she could do
17 arithmetic, that her insight and judgment were fair, and that her
18 thoughts were logical and goal-directed. Dr. Kalman also found her
19 abstractions were intact, and he considered her intelligence average.
20 Dr. Kalman's findings (though not all aspects of his opinion, see
21 above) were consistent with other medical evidence, such as the
22 psychiatric evaluation on June 23, 2007, at which the clinician
23 specifically noted that the claimant's memory was intact.⁶

24 The undersigned therefore found that Dr. Amado's opinion was
25 inconsistent with, and therefore necessarily inconsistent with, the
26 medical evidence of record, and consequently concluded that Dr.
27 Amado's opinion [was] not persuasive.

28 AT 33, citing AT 104-118.

The ALJ discounted this opinion for the same reasons he rejected similar portions of Dr.
Kalman's opinion, noting an additional record of plaintiff's largely normal mental examination
during the period of alleged disability. Because the ALJ articulated why he found Dr. Santiago's
and Dr. Patterson's opinions to be supported by objective medical evidence and consistent with
the overall record, as discussed above, plaintiff has not shown reversible error based on the
mental RFC.

⁶ Citing AT 534 (June 2017 treatment note).

1 B. Physical Limitations

2 Plaintiff claims the ALJ failed to properly consider her left arm pain and limitations when
3 formulating the RFC.

4 As the ALJ noted in his decision, plaintiff first complained of pain in her left shoulder and
5 arm in September 2017. AT 30, citing AT 450. The examining doctor's impression was that the
6 pain came from "a left-sided cervical radiculopathy related to the C6-7 disc herniation." AT 30,
7 citing AT 451. Plaintiff underwent spinal fusion surgery in January 2018 and returned for a
8 follow-up examination in April 2018. At that visit, the ALJ noted,

9 [s]he reported that her left arm symptoms had completely
10 disappeared . . . The physical examination revealed her wound was
11 well healed, her gait was normal, and that her arm and leg strength
12 was good. The examiner wrote that the claimant had significant
13 physical symptoms that were incapacitating, however, the claimant's
14 radicular symptoms had disappeared, and with each follow-up visit
 she seemed to be getting a little better.⁷ It is important that the
 claimant's left arm symptoms had completely disappeared, as the
 great majority of her symptoms, as documented in the September 22,
 2017 examination, were in her left shoulder and left upper extremity.

15 Therefore, although there is no question of the claimant's two
16 surgeries for cervical spine impairments, the evidence of record
17 strongly suggests that . . . as a result of the January 9, 2018 surgery
 that fused the C6 and C7 vertebrae, . . . the majority of the claimant's
 symptoms were eliminated.

18 AT 31.

19 As set forth above, plaintiff's left arm and shoulder pain appears to have lasted seven
20 months and been largely eliminated by spinal surgery. Plaintiff has not met her burden to show
21 that this alleged impairment lasted for a continuous period of not less than 12 months, as required
22 by the Social Security Act. Thus, plaintiff has not shown reversible error on this basis.

23 CONCLUSION

24 For the reasons stated herein, IT IS HEREBY ORDERED that:

- 25 1. Plaintiff's motion for summary judgment (ECF No. 14) is denied;
26 2. The Commissioner's cross-motion for summary judgment (ECF No. 15) is granted;

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⁷ Citing AT 556.

1 and

2 3. Judgment is entered for the Commissioner.

3 Dated: June 28, 2021



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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